

**SEP 14 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FABIAN ZAVALA-ICIDA,

Defendant - Appellant.

No. 05-50461

D.C. No. CR-03-02105-IEG

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Irma E. Gonzalez, District Judge, Presiding

Submitted September 11, 2006\*\*

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Fabian Zavala-Icida appeals from his conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *United States v. Ubaldo-Figueroa*, 364 F.3d 1042, 1047 (9th Cir. 2004), and affirm.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant contends that the district court improperly denied his motion to dismiss the indictment due to an invalid prior removal. We disagree and conclude that the district court properly denied the motion. *See id.* at 1048.

Even assuming that appellant was denied the opportunity for judicial review of his prior removal proceedings, he was statutorily precluded from receiving cancellation of removal because he had already been granted such relief once before. *See* 8 U.S.C. § 1229(b)(6); *Maldonado-Galindo v. Gonzales*, 456 F.3d 1064, 1067-69 (9th Cir. 2006). Accordingly, appellant failed to demonstrate that the underlying removal order was fundamentally unfair or that he suffered prejudice as a result. *See Ubaldo-Figueroa*, 364 F.3d at 1048.

**AFFIRMED.**